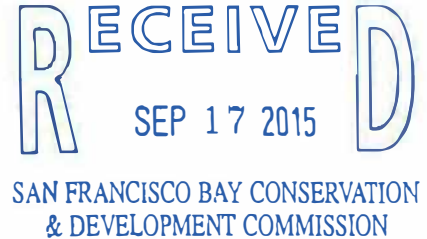


LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504



September 16, 2015

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, suite 10600
San Francisco, CA 94102

Re: Application for Amended Permit re: Required Shoreline Access from Lewelling Boulevard, in the City of San Leandro, over Heron Bay Homeowner Association Property (BCDC Permit No. 1992.057, dated July 5, 1994).

Gentlepersons:

As you are aware, we represent the interests of Heron Bay Homeowners Association (hereinafter referred to as "the HOA" or "the Association" or "Heron Bay") in the matter of the alleged non-compliance of the Association with San Francisco Bay Conservation and Development Commission, Permit No. 1992.057 (alternately referred to on the Recorder's Copy of the Permit as Permit No. M92-57 (hereinafter referred to as "the permit"). This correspondence and the attached documents will constitute the Association's application for an Amended Permit seeking approval of as-built conditions that will put the HOA in compliance with the terms of the original permit and of several new additions.

For the record we would note that the original permit was issued to Citation Homes, the original developer and builder of the Heron Bay complex, which is comprised of 629 homes. There was no existing construction of homes prior to the issuing of the subject permit. Citation Homes turned over control of the complex to the original homeowner controlled Board of Directors more than twenty years ago with no reference whatsoever to the existing permit 1992.057. The current HOA had no knowledge of the existence of the permit nor or any alleged failures to comply until mid-summer 2014 when the HOA made application to the City of San Leandro for the installation of entrance gates at the complex because of growing crime on the grounds of the HOA. At that time the Association was advised by BCDC of the existence of the permit and alleged violations of that permit, in particular violations of the requirements of section F (3) Public Access Improvements. Since that time the HOA has been meeting with and working with the staff of BCDC and the City of San Leandro to achieve mutually agreeable solutions to the existing problems. The purpose of this Amended Permit Application is to resolve the allegations of lack of compliance in the area of Public Access Improvements to the satisfaction of BCDC and the HOA. We would note that a check in the amount of

\$600.00 is enclosed representing the application fee (2X) as suggested by BCDC in an email of September 11, 2015.

The HOA is also aware that the City of San Leandro is in default on certain terms contained in Permit no. 14-89, issued on March 7, 1990, as amended through June 28, 2000, and as recorded on October 6, 2000 as document no. 2000302674. It is the Association's understanding that the City has until September 17, 2015 to submit their Amended Permit Application. The HOA is not privy to the information that may be contained in that Amended Permit Application but reserves the right to object to and comment upon any proposals or guarantees in said application that may affect the Heron Bay Homeowners Association.

The HOA understands that Permit 1992.057, section F (3)(c) required a minimum 12-foot wide, handicapped accessible, pedestrian and bicycle path, with a minimum 8-foot wide, asphalt, primary use area and a minimum total of 4 feet of shoulder. In fact the as-built condition contains a 36-foot wide two-lane asphalt street; curb and planter beds which are 12-feet wide on the north side of Bayfront and a strip on the south side of Bayfront that is approximately 5 ½-feet wide. These dimensions generally run from the beginning of Bayfront Drive to the bay trails. As these as-built conditions are substantially wider and more improved than the original requirement, no changes are being suggested by the HOA other than the addition of parking spaces (subject to kiosk approval), the addition of signage, benches and sharrows, all of which are discussed within and in the attached application.

As part of this Amended Permit Application, the HOA is submitting a request for permission to develop an entry kiosk located in the roundabout located between Lewelling Avenue and Bayfront Drive. It is noted that the roundabout area where the kiosk would be located is owned by the City of San Leandro and is out of HOA and BCDC control. However, it is recognized that BCDC has the right to determine whether or not any suggested improvement will violate any of the conditions of Public Access. The HOA would refer to the photos marked as Exhibit C and Exhibit D to this application. Those photos indicate that the site lines from the entry to the complex to the bay trails are not in any way impeded by the proposed placement of the kiosk. The white poles with yellow flags on top in the photos simulate the actual horizontal and vertical height of the kiosk. BCDC has been previously provided renderings of the conceptual plan for the proposed kiosk. The HOA has stated and continues to state that they will comply with all reasonable requests of BCDC regarding the time the kiosk will be manned, the information that would be given to bay trail users by the kiosk attendants, the signage in and around the kiosk, and any other issues or restrictions that may or may not affect public access. The HOA has been advised that BCDC will not approve the kiosk proposal unless the City of San Leandro has already given its approval. This application will advise BCDC that an application for a permit for this improvement will be submitted to the City of San Leandro for approval within the next fourteen (14) days. The HOA respectfully requests that either BCDC delay ruling on this application for Amended Permit until such time as the City make a decision on the application to be

presented or, alternatively, grant the Amended Permit Application subject to City approval.

The HOA is also aware that the City of San Leandro is filing for an Amended Permit at the same time as is the HOA. It is the HOA's understanding that the City's application, at the request of BCDC, will include proposed parking in the roundabout at the entrance to Bayfront Drive. While the HOA is not formally objecting to that proposal at this time, the HOA reserves the right to do so in an appropriate forum as the HOA is doubtful that there is enough room to place parking in that location and still have clearance for large delivery trucks and the longest fire trucks to pass into the complex if the roundabout is filled with parked cars. Furthermore, as is stated in the attached application summary, the HOA is suggesting that if their request for an entry kiosk is approved by the City of San Leandro and BCDC, that they will provide 15 additional parking spaces (2 of which will be designated as handicapped) along Bayfront Drive. These proposed spaces would be closer to the bay trails and much easier to navigate for parking should they be approved as part of the kiosk proposal than would be parking in the roundabout. The HOA's parking proposal would render the City's proposed parking in the roundabout unnecessary. The HOA has agreed to place electronic monitors on the spaces to be located on Bayfront Drive so that the attendant at the kiosk may advise potential visitors to the bay trails of the availability of parking on the drive.

The HOA is aware that one of the permit requirements was a permanent guarantee of public access. Again, the HOA was unaware of this requirement until first notice in 2014. The Association has always supported public access to the bay trails and is more than happy to execute a permanent guarantee as for public access and to buffer areas as described in Segment 2 and Segment 3 in Special Condition II.F.1. If BCDC will supply the language they require along with the appropriate legal description that satisfies their interests, the HOA will execute same forthwith. If BCDC does not have the document to deliver to the HOA, the HOA will work with BCDC staff within the next 14 days to agree on appropriate language for said permanent guarantee. Again, this is a non-issue for the HOA as the HOA is ready, willing and able to execute such an agreement.

This document and the attached Application for Amended Permit and attachments thereto constitute the Heron Bay Homeowners Association application to BCDC for an Amended Permit. If BCDC has any questions regarding the materials submitted or the intent of the Association in so filing, please do not hesitate to contact the undersigned. The HOA reserves the right to submit additional materials or clarifying statements during the pendency of the application.

Very truly yours,



A. Alan Berger
Attorney for Heron Bay Homeowners Association

Cc: Client

Amendment No.	2 to M1992.057
Rec'd on	9/17/15
Staff asgnd	Maggie W.
Logged on	9/21/15
Fee Paid	\$600.- CIL N°-23086
Non-Mat	✓

Heron Bay HOA Amended Permit Application

Permit No. 1992-057

Background Facts:

The original BCDC Permit # 1992-057 executed on July 6, 1994 and recorded on August 5, 1994 prescribes a public access pedestrian and bicycle easement between the westerly end of Lewelling Blvd and the future Bay Trail head adjacent to the western edge of the future Heron Bay residential development. The approved and recorded Final Tract Map, which depicts the then future development, shows the public access easement over the parcel containing the future private street described as "Bayfront Drive". As built, Bayfront Drive is and has always been a two-lane asphalt street bounded on its northern edge by a City standard concrete sidewalk and planter beds containing a variety of plants and shade trees. Since the HOA succeeded the developer as the permittee more than 20 years ago, the HOA has consistently honored and respected the public access pedestrian and bicyclist easement as built.

In 2014, BCDC determined that the existing concrete sidewalk and road bed does not comply with the original design standard parameters as stated in F (3) of the permit and has required that the public access easement be brought into standard or, in the alternative, that the permit be amended to allow the as-built public access to remain. As part of such amendment, BCDC requests/requires additional mitigation to offset the past impact on the public access across the easement although applicant is unaware of any specific complaint of lack of public access over the past many years.

The following constitutes applicant's suggestions for improvements to the site in question and is part of the application to amend the original permit described above. Applicant believes and intends that the following improvements, if approved, will bring the HOA into substantial compliance with the terms of the original permit and will, in fact, constitute a significant betterment to the original permit requirements.

Amendment Goals:

1. Per BCDC policy, Bay Trail access shall be open and accessible to the maximum extent possible;
2. BCDC further seeks enhanced directional signage to facilitate maximum accessibility;
3. BCDC seeks a welcoming environment for Bay Trail users crossing HOA property;

4. BCDC seeks the addition of vehicle-parking privileges, not required in the original permit, within the HOA property for Bay Trail users arriving by motor vehicle.

Amendment Methods proposed to achieve the above stated goals with additional bay trail user enhancements including onsite parking and entry kiosk:

1. HOA to install and maintain BCDC approved directional signage along the public access easement as depicted in the attached overhead graphic of Bayfront Drive to assist pedestrians and bicyclists accessing the Bay Trail. The HOA will amend this application to include any further or differing signage that BCDC may require as a condition to the approval of this application.
2. HOA to install and maintain "Sharrows" as required by BCDC standard along the roadbed of Bayfront Drive;
3. Subject to City of San Leandro and BCDC approval, HOA to build an entry Kiosk within the Lewelling Bulb planter area as depicted in the attached artist renderings, to serve as a permanent structure to provide shelter and basic services to an Entry Attendant hired by the HOA whose job includes greeting all vehicles coming onto the property, providing directional assistance for Bay Trail users arriving by motor vehicle, and assistance to Bay Trail pedestrians and bicyclists upon request. The exact location of the kiosk will be such that it will not obstruct bay views to visitors upon entering Heron Bay.
4. HOA to install separate welcoming signage on the Kiosk (depicted in the overhead graphic) as well as in the approach to Heron Bay as allowed by the City of San Leandro;
5. HOA to install additional benches along the easement for the use of members of the public while using the Bay Trail access. The exact number and location of which are to be determined by agreement between BCDC and the HOA.
6. HOA to install additional trash receptacles along the trail access easement and dog poop bag dispensers. The exact number and location of which are to be determined by agreement between BCDC and the HOA.
7. HOA to designate and mark 15 vehicular parking spaces along Bayfront Drive for use by Bay Trail users during daylight hours plus one hour past sunset on a first come, first served, space available basis. At all other times, HOA permit parking rules would apply. These spaces would be marked to include 2 ADA compliant (Blue) spaces and 13 City standard spaces with electronic parking availability transmitted to the entry kiosk. In this manner the attendant is able to advise potential visitors of the availability of

parking on Bayfront Drive. *The designation of 15 parking spaces is expressly contingent upon approval of the Kiosk by the City and BCDC.*

8. Simultaneously with this application, the HOA is proceeding forward with an application to the City of San Leandro for approval of the Kiosk as proposed.

Attachments :

1. Overhead graphics depicting the proposed changes to the existing public access easement;
2. Artist's renderings of the proposed Kiosk;
3. Photos of site depicting current conditions.
 - A. SF Bay Trail- Bayfront Drive Access.
 - B. Proposed Kiosk- Roundabout Enhancements.
 - C. Westerly view of Bayfront Drive and Roundabout demonstrating the proposed location of the kiosk (see the placement of the poles).
 - D. Westerly view of Bayfront Drive and Roundabout from railroad tracks from Lewelling Drive demonstrating the proposed location of the kiosk (see the placement of the poles).